

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|  |   |                     |
|--|---|---------------------|
| In the Matter of                               | ) |                     |
|  | ) |                     |
| Petition of Mid-Rivers Telephone               | ) | WC Docket No. 02-78 |
| Cooperative, Inc. for Order Declaring it to be | ) |                     |
| an Incumbent Local Exchange Carrier in         | ) |                     |
| Terry, Montana Pursuant to Section 251(h)(2)   | ) | DA 04-3789          |

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) petition requesting that it be classified as an incumbent local exchange carrier (ILEC) in Terry, Montana.<sup>1</sup> OPASTCO is a national trade association representing more than 560 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

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<sup>1</sup>*Pleading Cycle Established for Comments Regarding Mid-Rivers Section 251(h)(2) Notice of Proposed Rulemaking*, WC Docket No. 02-78, Public Notice, DA 04-3789 (rel. Nov. 30, 2004).

## II. COMMENTS

OPASTCO agrees with commenters that urge the Commission to grant Mid-Rivers' petition declaring it to be an ILEC in Terry, Montana.<sup>2</sup> Under Section 251(h)(2) of the Telecommunications Act of 1996, the Commission has the authority to classify a particular local exchange carrier as an ILEC if: (1) the carrier occupies a market position that is comparable to an incumbent; (2) the carrier has substantially replaced an ILEC; and (3) such reclassification is consistent with the public interest, convenience, and necessity. As NTCA and TCA have pointed out, Mid-Rivers clearly meets the three-prong test.<sup>3</sup>

For instance, Mid-Rivers has a strong local presence in Terry, serving approximately 93 percent of the customers within the exchange.<sup>4</sup> Certainly this degree of market penetration represents "a market position comparable to an incumbent" and also proves that the existing ILEC – Qwest – has been "substantially replaced" by Mid-Rivers.<sup>5</sup> In addition, given the fact that so many Qwest subscribers in Terry have opted to switch their service to Mid-Rivers, it is obvious that Mid-Rivers' service represents an improvement to the service provided by Qwest. Clearly this improvement in service quality would meet the public interest test under Section 251(h)(2). Moreover, were its petition granted, Mid-Rivers would take on the responsibilities of an ILEC for the Terry

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<sup>2</sup> National Telecommunications Cooperative Association (NTCA) Comments, pp. 1-2; Rural Independent Competitive Alliance (RICA) Comments, p. 2; Telecom Consulting Associates, Inc. (TCA) Comments, pp. 1-2.

<sup>3</sup> NTCA Comments, pp. 3-4; TCA Comments, pp. 2-5.

<sup>4</sup> See, *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, Notice of Proposed Rulemaking, FCC 04-252, para. 4 (rel. Nov. 15, 2004).

<sup>5</sup> See, *Ibid.*, para. 3.

exchange. The public would benefit from Mid-Rivers' classification as an ILEC, since Mid-Rivers has sufficient resources to continue providing the community with state of the art telecommunications using its own facilities.<sup>6</sup>

Section 251(h) was clearly intended to address Mid-Rivers' situation in Terry, Montana. Congress recognized that, although the 1996 Act froze the list of incumbents at its enactment, prevailing market conditions likely would change over time.<sup>7</sup> Thus, competitive LECs that replace ILECs should have the option to choose the regulatory status appropriate to an ILEC.

### **III. CONCLUSION**

For the foregoing reasons, OPASTCO urges the Commission to grant Mid-Rivers' petition for designation as an ILEC for the Terry, Montana exchange.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

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January 14, 2005

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<sup>6</sup> See, TCA Comments, pp. 4-5.

<sup>7</sup> See, RICA Comments, p. 5.

## **CERTIFICATE OF SERVICE**

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 14th day of January, 2005, to those listed on the attached list.

By: /s/ Jeffrey W. Smith  
Jeffrey W. Smith

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**DA 04-3789**

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